

ORIGINAL**FILED**

2007 JAN 11 PM 3:47

CLERK US DISTRICT C. L.P.
SOUTHERN DISTRICT OF CALIFORNIABY RM DEPUTY

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5 Attorneys for Plaintiff,
6 MICHAEL MANN doing business as MM BIZ

7 **UNITED STATES DISTRICT COURT**
8
SOUTHERN DISTRICT OF CALIFORNIA

9
10 MICHAEL MANN doing business as MM BIZ,

'07CV0083 BEN CAB

11 Plaintiff,

) VERIFIED COMPLAINT FOR:
12 v.) DECLARATORY RELIEF (28 USC §
13 AFN INVESTMENTS, LTD. an unknown entity,) 2201; 15 USC § 1114(2)(d)(v))
14 Defendants.

15 _____ BY FAX

17 Plaintiff, MICHAEL MANN doing business as MM BIZ (collectively "MM"), for causes
18 of action against Defendant, AFN INVESTMENTS, LTD. an unknown entity, alleges as follows:

19 1. Plaintiff, MICHAEL MANN is, and at all times mentioned herein was, an
20 individual, residing in the City of Bethesda, County of Montgomery, State of Maryland, and
21 doing business as MM BIZ (collectively "MM" or "Plaintiff").

23 2. Plaintiff is informed and believes, and thereon alleges, that Defendant, AFN
INVESTMENTS, LTD. ("AFN"), is, and at all times mentioned herein, was, an unknown entity,
25 with its principal place of business in the City of Belton, County of Bell, State of Texas.

26 3. Plaintiff is informed and believes, and thereon alleges, that TIERRANET, INC., is
27 a California corporation, with its principal place of business in the City of Poway, County of San

Diego, State of California, and doing business as DOMAIN DISCOVER and DOMAINDISCOVER ("DOMAIN DISCOVER").

4. Jurisdiction and venue are proper in this Court. Specifically, DOMAIN DISCOVER's principal place of business is in Poway, California, in the County of San Diego, within this Court's jurisdiction. Moreover, Defendant, AFN, stipulated in a previous proceeding, described below, pursuant to the Internet Corporation for Assigned Names and Numbers' ("ICANN") Uniform Domain-Name Dispute-Resolution Policy ("UDRP"), that jurisdiction was proper in this Court, the judicial district in which DOMAIN DISCOVER is located. Paragraphs 1, 3(b)(xiii), and other provisions of ICANN's Rules for Uniform Domain Name Dispute Resolution Policy also provide for jurisdiction and venue in this Court.

5. Jurisdiction is also proper in this Court on an *in personam* basis pursuant to the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d), and pursuant to other federal statutes, regulations, and case law.

FIRST CAUSE OF ACTION

(Declaratory Relief)

((28 USC § 2201; 15 USC § 1114(2)(d)(v)))

(Against Defendant, AFN)

6. Plaintiff refers to the allegations contained in Paragraphs 1 through 5 inclusive, and incorporates those allegations herein as though fully set forth.

7. Plaintiff is a reputable business man who founded one of the world's largest companies providing direct navigation services, the delivery of targeted results on the World Wide Web of the Internet, as well as domain name registration, domain name transfer, web hosting services, and the buying and selling of generic and descriptive domain names, BuyDomains.com. Plaintiff sold a controlling interest in said company in February 2005.

8. Plaintiff, directly and indirectly through companies in which he invests, routinely creates websites and portals for valid business reasons.

1 9. Plaintiff never registers or offers for sale any domain names which he reasonably
2 believes would infringe the rights of any trademark holder. Instead, Plaintiff and his companies
3 solely invests in and sells domain names which, to the best of their knowledge and belief, they
4 reasonably believe they are legally entitled to acquire and sell. In many cases, the domain names
5 are either: (1) generic, i.e., can never be subject to any trademark claims because they only name
6 the goods or services being provided; or (2) merely descriptive, i.e. are not subject to any
7 trademark claims because they merely describe an attribute of the goods or services provided. It
8 is basic hornbook law that neither generic or merely descriptive names are entitled to any
9 trademark protection.

10 11. In addition to being a successful businessman, Plaintiff is a philanthropist. Plaintiff
12 has registered hundreds of domain names solely for non-profit, public interest purposes, and
13 which Plaintiff has given or leased to third parties at no cost whatsoever for their public interest
14 usage.

15 16. On or about July 29, 2005, Plaintiff acquired the domain name
17 <LABORFORCE.COM> (the "Domain Name") . Plaintiff acquired the Domain Name to
18 develop into a business.

19 12. At the time that Plaintiff acquired the Domain Name, Plaintiff had no actual
20 knowledge that any entity claimed trademark rights in the mark LABOR FORCE.

21 13. Indeed, the term "LABOR FORCE" is a generic or descriptive term. There are
22 millions of references on the World Wide Web of the Internet to the phrase "LABOR FORCE",
23 as shown through a search with the Google search engine. The term "Labor Force" is found in
24 the dictionary, is used by federal and state governmental entities, and is understood by the public
25 to mean the total number of employed or employable persons.

26 14. At least one third party, Laborsoft Corporation, owns a trademark for the mark
27

1 LABOR FORCE.

2 15. Plaintiff is informed and believes, and thereon alleges, that even if the term
3 LABOR FORCE was not generic or merely descriptive when Defendant, AFN, applied for
4 trademark registrations of that name, the term LABOR FORCE has since become generic or
5 merely descriptive, and has thus lost any trademark rights which it ever had, if any.

6 16. Plaintiff is further informed and believes, and thereon alleges, that Defendant,
7 AFN, has abandoned any trademark rights which it had, if any.

8 17. For all of the above-described reasons, and as will be demonstrated at trial,
9 Plaintiff registered the Domain Name in good faith.

10 18. Moreover, because Plaintiff desires to develop the Domain Name into a viable
11 Internet and/or e-mail related business, and because domain names are a valuable property right
12 that may only be taken away if a trademark user has exclusive rights to a protectable mark in the
13 same class of goods or services, and given that the phrase LABOR FORCE is generic, merely
14 descriptive, or not subject to exclusive ownership and enforcement by Defendant, AFN, Plaintiff
15 has legitimate rights and/or legitimate interests in respect to the Domain Name.

16 19. In or about December 2006, the National Arbitration Forum (the "NAF") rendered
17 a decision in a UDRP proceeding brought by Defendant, AFN, against Plaintiff, entitled *AFN*
18 *Investments, Ltd. v. MM Biz*, being NAF Claim Number FA0610000819167. In its decision,
19 NAF ruled that Plaintiff must transfer the Domain Name to Defendant, AFN. Plaintiff believes
20 that NAF's decision was incorrect and that he can prove the same.

21 20. Indeed, if NAF's decision were correct, then no honest business could invest in or
22 sell any generic or descriptive domain name for fear that someone claiming a trademark in some
23 niche market would end up obtaining such domain name at no cost. This result is absurd. The
24 secondary market for domain names is a multi-million dollar industry. Under AFN's

1 interpretation of the law and facts, that market would be destroyed.

2 21. 28 U.S.C. § 2201 provides a basis for declaratory relief in the instant action.

3 22. In addition, declaratory relief is proper under 15 U.S.C. §
4 1114(2)(d)(v), which provides:

5 A domain name registrant whose domain name has been
6 suspended, disabled, or transferred under a policy described
7 under clause (ii)(II) may, upon notice to the mark owner,
8 file a civil action to establish that the registration or use of
9 the domain name by such registrant is not unlawful under
10 this chapter. The court may grant injunctive relief to the
11 domain name registrant, including the reactivation of the
domain name or transfer of the domain name to the domain
name registrant.

12 23. An actual controversy has arisen and now exists between Plaintiff and Defendants
13 concerning their respective rights and duties in the Domain Name. Plaintiff contends as follows:
14 that Plaintiff is the rightful owner of the Domain Name and is entitled to its sole use and
15 possession. Defendant, AFN, contends that it is entitled to the Domain Name. DOMAIN
16 DISCOVER is the registrar for the Domain Name, and is awaiting an order of this Court to
17 instruct it on whether the Domain Name should remain with Plaintiff or should be transferred to
18 Defendant, AFN.

20 24. Plaintiff desires a judicial determination of his rights, obligations, and duties with
21 respect to the Domain Name and a declaration that he possesses all right, title, and interest in and
22 to the Domain Name as against any claim to the Domain Name by Defendant, AFN.

24 25. A judicial determination of Plaintiff's rights as to the Domain Name is necessary
25 and appropriate at this time in order to determine whether Plaintiff can retain the Domain Name,
26 in order to instruct DOMAIN DISCOVER on who owns the Domain Name and/or to instruct
27 DOMAIN DISCOVER to transfer the Domain Name into the registry of the Court, and to avoid
28 circuitry and multiplicity of actions that will otherwise result from any separate action that must

1 be brought against Defendant, AFN.

2 WHEREFORE, Plaintiff prays for judgment against Defendant, AFN, as follows:

3 1. For a judicial determination and declaration as to Plaintiff's right, title, and
4 interest in and to the Domain Name which is the subject of this action;

5 2. For a judicial determination and declaration that Defendant, AFN, has no right,
6 title or interest to the Domain Name that is the subject of this action, and that Plaintiff is the sole
7 owner of the Domain Name;

8 3. For a judicial determination and declaration that DOMAIN DISCOVER should
9 not transfer the Domain Name to Defendant, AFN, and should instead transfer the Domain Name
10 into the registry of the Court;

11 4. For costs of suit herein; and

12 5. For such other and further relief as the Court may deem just and proper.

13 THE WILLIAMS FIRM

14 D. Alexander Floum, Esq.
15 Attorneys for Plaintiff, MICHAEL MANN
16 doing business as MM BIZ

17 Dated: January 4, 2007

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VERIFICATION

2 I, MICHAEL MANN, am the sole proprietor of MM BIZ, am the Plaintiff in this action,
3 and make this verification on behalf of myself as an individual, and doing business as MM BIZ.
4 I have read the foregoing Verified Complaint and know its contents. The matters stated in it are
5 true of my own knowledge except as to those matters which are stated on information and belief,
6 and to those matters I believe them to be true.
7

8 I declare under penalty of perjury under the laws of the State of Maryland and under the
9 laws of the State of California that the foregoing is true and correct. Executed this 11th day of
10 January, 2006, at Bethesda, Maryland.

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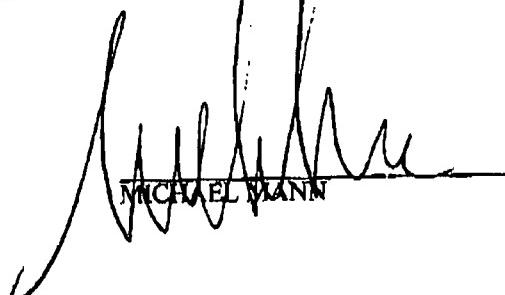
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A handwritten signature in black ink, appearing to read "MICHAEL MANN", is written over a series of stylized, overlapping loops and peaks that resemble a waveform or a series of hand-drawn loops.

ORIGINAL

JS44

(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS MICHAEL MANN doing business as MM BIZ

DEFENDANTS AFN INVESTMENTS, LTD., US AIR LINES, INC., COUNTY UNKNOWN ENTITY SOUTHERN DISTRICT OF CALIFORNIA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT BY DEPUTY
(IN U.S. PLAINTIFF CASES ONLY) Bell County, TX

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
D. Alexander Floum (925) 933-9800
The Williams Firm
1850 Mt. Diablo Blvd., Suite 340
Walnut Creek, CA 94596

ATTORNEYS (IF KNOWN)

'07CV 0083

BEN CAB
BY FAX

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- U.S. Government Plaintiff Federal Question
(U.S. Government Not a Party)
- U.S. Government Defendant Diversity (Indicate Citizenship of Parties in Item II)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR DIVERSITY CASES ONLY)		FOR PLAINTIFF AND ONE BOX FOR DEFENDANT	
<input type="checkbox"/> Citizen of This State	<input type="checkbox"/> PT --- DBP ---	<input type="checkbox"/> Incorporated or Principal Place of Business	<input type="checkbox"/> PT --- DBP ---
<input checked="" type="checkbox"/> Citizen of Another State	<input type="checkbox"/> in This State	<input type="checkbox"/> in Another State	<input type="checkbox"/> in Another State
<input type="checkbox"/> Citizen or Subject of a Foreign Country	<input type="checkbox"/> Foreign Nation	<input type="checkbox"/> Foreign Nation	<input type="checkbox"/> Foreign Nation

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY). This is a declaratory relief action pursuant to 28 U.S.C. Section 2201 and 15 U.S.C. Section 1114(2)(d)(v)

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	PORTRIURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 411 Agriculture	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 1338	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 1337	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instruments	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury - Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 520 Copyrights	<input type="checkbox"/> 460 Deparation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 Patents	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Trademarks	<input type="checkbox"/> 510 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	SOCIAL SECURITY	<input type="checkbox"/> 550 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suit	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other	<input type="checkbox"/> 610 HIA (13958)	<input type="checkbox"/> 575 Customer Challenge 12 USC
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> LABOR	<input type="checkbox"/> 620 Black Lung (923)	<input type="checkbox"/> 591 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 630 DIFWC/DIVW (405(g))	<input type="checkbox"/> 592 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 640 SSID Title XVI	<input type="checkbox"/> 593 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 650 RSL (405(g))	<input type="checkbox"/> 594 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 670 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 595 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 750 Other Labor Litigation	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 690 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 791 Empl. Ret. Inc.		<input type="checkbox"/> 950 Constitutionality of State
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 446 Other Civil Rights	<input type="checkbox"/> Security Act		<input type="checkbox"/> 990 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property				

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- Original Proceeding 2 Removal from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER FRCP 23

DEMAND \$ COSTS & ATTORNEYS FEES

Check YES only if demanded in complaint:

DEFENDANT: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE

1/11/2007

SIGNATURE OF ATTORNEY OF RECORD

133783 \$350 Ser 1/11/07

UNITED STATES
DISTRICT COURT
Southern District of California
San Diego Division

133783 -- AS
January 14, 2007

Code	Case #	Buy	Amount
CW083900	3-07-CV-0083		60.00 CH
Judge.	- BENNETT		
CW086400			100.00 CH
CW081800			100.00 CH

Total - > 350.00

FROM: CIVIL FILING
MICHAEL HARRIS NEW INVESTMENT
112
1710 37th St., Ste. 100
Long Beach, CA 90803